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## State Dept. declassification &amp; release instructions on file

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TAGS: EAIR, PLOS, ICAO, PORG

SUBJECT: REVIEW OF DIRECTIVES TO THE ICAO OBSERVER  
AT THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF  
THE SEA (C-WP/6479)

1. THE SUBJECT PAPER PROCEEDS ON THE BASIS THAT THE REVISED SINGLE NEGOTIATING TEXT OF THE LAW OF THE SEA CONFERENCE AS IT RELATES TO THE LEGAL STATUS OF THE ECONOMIC ZONE IS THE FINAL WORD ON THE SUBJECT. IN FACT, THE UNITED STATES IS OPPOSED INTER ALIA TO ARTICLE 75, WHICH STATES SPECIFICALLY THAT THE ZONE IS NOT HIGH SEAS, AS A LEGAL MATTER THE ZONE IS IN FACT HIGH SEAS FOR CERTAIN PURPOSES, E.G. NAVIGATION AND OVERFLIGHT, AND NOT HIGH SEAS FOR OTHER PURPOSES, E.G. COASTAL STATE RESOURCES JURISDICTION.

2. US REP SHOULD THUS AT THIS TIME NOT ENDORSE ICAO SUPPORT FOR THE ARTICLE CONTAINED IN PARA. 4 OF C-WP/6479. BECAUSE IT IS PREJUDICIAL TO OUR EFFORTS TO AMEND THE PERTINENT ARTICLES RELATED TO THE LEGAL STATUS OF THE ECONOMIC ZONE.

3. WITH REGARD TO PARA. 7, THE REVISED SINGLE NEGOTIATING TEXT RECOGNIZES A RIGHT OF ALL AIRCRAFT, BOTH MILITARY AND CIVIL, TO EXERCISE ARCHIPELAGIC SEALANES PASSAGE OVER THE WATERS OF THE ARCHIPELAGO. THUS, WHILE THE ARCHIPELAGIC STATE WOULD HAVE SOVEREIGNTY WITHIN THE ARCHIPELAGO, INCLUDING OVER ARCHIPELAGIC WATERS, THIS RIGHT OF OVERFLIGHT WOULD BE RECOGNIZED.

4. WE DO NOT RECOMMEND THAT ICAO BE THE FORUM FOR A LAW OF THE SEA DEBATE ON THE ISSUES RAISED IN THE FOREGOING PARAS. WE BELIEVE IT WOULD BE APPROPRIATE FOR THE ICAO OBSERVER TO CONTINUE TO REFRAIN FROM INTERVENING IN THE DEBATE ON THE ECONOMIC ZONE AT LEAST UNTIL THE COUNTRIES INVOLVED HAVE AGREED ON A SUITABLE ACCOMMODATION ON THE LEGAL STATUS OF THE ECONOMIC ZONE. IF IT IS NECESSARY FOR SOME REASON FOR THE ICAO OBSERVER

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TO MAKE A STATEMENT, IT SHOULD MERELY BE TO REMIND  
 DELEGATES THAT THEIR DELIBERATIONS MAY AFFECT THE  
 REGIME OF INTERNATIONAL CIVIL AVIATION AND THAT THEY  
 SHOULD CONSIDER THE CHICAGO CONVENTION REQUIREMENTS IN  
 COMING TO ANY CONCLUSIONS. VANCE